

The Law Office of Charles T. Riggs Jr.

PATENTS – TRADEMARKS – COPYRIGHTS

551 Forest Avenue
River Forest, Illinois 60305
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March 28, 2024

VIA EMAIL (vivek@jayaramlaw.com)

Vivek Jayaram
Jayaram PLLC
125 S. Clark St., Suite 1175
Chicago, IL 60603

Re: **Holy Cow Franchise trademark infringement**

Dear Vivek:

This letter is in reply to your letter emailed March 14, 2024. As indicated in my prior letter, Harry Caray, Ltd. is the owner of U.S. Service Mark Registration No. 3,141,729 for the mark “HOLY COW!” for restaurant and bar services. Your client is using the mark HOLY COW for its restaurant franchises. Both the marks and the services are essentially the same. As such, the case for trademark infringement is crystal clear.

Your letter somehow suggests that the respective services are “not similar.” However, this is nonsensical as the respective services are both restaurant services. In other words, the services are identical. Your letter attempts to distinguish the services by indicating that your client’s restaurant “offers halal, as well as vegetarian and vegan burgers and associated food offerings...” However, my client’s restaurant services as listed in its registration are not limited to any particular types of foods. Nonetheless, I note that your client’s restaurants also serve burgers, hot dogs, and chicken sandwiches (see Exhibit A attached hereto – www.holycow.nyc menu). I note further that my client’s restaurants also serve burgers, hot dogs, and chicken sandwiches, as well as vegetarian options. Unequivocally, the respective services are identical.

Your letter also suggests that there have been no [known] instances of actual confusion since your client allegedly started using the mark in 2018. However, as I am sure you know, whether there has or has not been any actual confusion is not the standard for trademark infringement. The standard is a likelihood of confusion, and the existence of actual confusion is but one of the Du Pont factors in a likelihood of confusion analysis. Nonetheless, you acknowledge that since 2018, your client’s restaurant’s popularity has steadily increased. This steadily increasing popularity is a factor which strongly favors my client in the likelihood of confusion analysis. As your client’s restaurants continue to grow and increase in popularity, this increases the likelihood of consumer confusion. Consumers are likely to mistakenly believe that your client’s services emanate from my client, and/or that there is some affiliation between our clients, especially given the fame of Harry Caray and his associated catch phrase HOLY COW. Accordingly, a likelihood of confusion is easily found.

As your client's infringement of my client's registered mark is crystal clear, I would be remiss if I did not mention that my client's registration allows for the recovery of statutory damages for willful infringement up to \$2,000,000 per type of services offered. Since your client apparently has nine franchise locations, the full amount of statutory damages would total \$18,000,000 in that instance.

My client is also hopeful this matter can come to a swift and mutually-agreeable resolution. Your client's initial lawyer who contacted me in this matter inquired about the possibility of licensing my client's mark. If your client is interested in pursuing licensing negotiations, please let us have your proposal for the same. Failing that, please let us know how long your client will need to effect a name change.

Nothing contained herein should be construed as a waiver of any rights or remedies which Harry Caray, Ltd. may have, all of which are expressly reserved.

I look forward to hearing from you by April 19, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "C. T. Riggs Jr.", with a stylized flourish at the end.

Charles T. Riggs Jr.
riggs@riggs.pro

cc: Harry Caray, Ltd

